

In re Interest of Kane L.

Caselaw No.

No. S-17-720, S-17-775

Filed on

Friday, May 4, 2018

Summary: Angela appeals out of the County Court of Buffalo County her son Kane's adjudication and other rulings of the Court. The State appeals the Court's failure to adjudicate Carter. The Supreme Court affirms Kane's adjudication and reverses the order declining to adjudicate Carter and remands for further proceedings.

Angela and Scott are the parents of Kane and Carter. They have one other child together, who was 19 at the time of the proceeding. Angela had another baby in 2017 with a different father and utilized the "Safe Haven" law. The baby is not part of the proceedings. At the time of the birth of the baby, Angela's urine tested positive for drugs. The baby's cord blood tested positive for methamphetamine, amphetamine, THC, and oxycodone. DHHS and law enforcement contacted Angela and she admitted to use of methamphetamine and marijuana during her pregnancy. She refused to give consent for Kane to be tested for drugs. DHHS then made contact with Scott who gave consent for Kane to be tested, but denied drug use. Kane tested positive for methamphetamine via a toenail test and Scott eventually admitted to meth use. Carter was on probation at this time and placed at a juvenile detention center.

When Carter returned home, arrangements were made for both children to stay with their oldest sister and then they were moved to live with the maternal grandparents. An ex parte was filed on February 17, 2017 with the petition soon following. On March 1, both parents appeared in court and were given attorneys. Both entered denials and waived protective custody hearing through counsel. An adjudication followed in June. No bills of exceptions were placed into the appellate record for either proceeding.

Angela assigns error to the Court not holding a protective custody or detention hearing, to admitting evidence of the baby's cord blood and Kane's toenail test, and for finding sufficient evidence to support adjudication. The county attorney assigns error that the Court did not adjudicate Carter. Angela cross appeals on her first two assignments of error.

An appellate court reviews juvenile cases de novo on the record. *In re Interest of Carmelo G.*, 296 Neb. 805 (2017). Determining whether procedures provided due process is a question of law. *In re Interest of Joseph S. et al.*, 288 Neb. 463 (2014). Review of a trial court's conclusions about evidentiary foundation and authentication is by abuse of discretion. *Midland Properties v. Wells Fargo*, 296 Neb. 407 (2017).

Regarding Angela's due process rights regarding her preliminary hearings, the Court here starts with the fundamental constitutional rights of parents which requires that there not be an unreasonable delay between removal and hearing on the issue. *In re Interest of Carmelo G.*, supra. Neb. Rev. Stat. § 43-248(2) allows the state to take a child into custody if the child is endangered and needs protection without a warrant or order of the court. An ex parte order is allowed, but soon after, "[a] prompt detention hearing is required in order to protect the parent against the risk of an erroneous deprivation of his or her parental interests." *Id.* at 908. In the *Carmelo G.* case, the Supreme Court found that a delay of 8 months for a protective custody

hearing was too long. *Id.* In *In re Interest of R.G.*, the Court found that a 14-day delay between ex parte and detention hearing was “on the brink of unreasonableness.” *In re Interest of R.G.*, 238 Neb. 405 at 423 (1991).

Here, the ex parte occurred on February 17, 2017 and the parents had input as to the placement of their children. Both parents were given their rights advisory on March 1 and that the protective custody and detention hearing were waived on that same day by counsel who indicated they would motion for the hearings if needed. So therefore the Court here finds no due process violation. After the waiver of the hearing, no motion was ever filed for another hearing.

As to the admission of the cord blood and toenail test on Kane, Angela submits that the county did not establish a chain of custody. The Court here reviews admission of the evidence for abuse of discretion. For the toenail, the Court finds that the procedures were appropriate ? both the person who collected the sample and the director of the lab testified as to the procedures. Concerning the cord blood, any error would be harmless because Angela admitted to use of meth and tested positive for it.

Angela also put forward that the county failed to show a nexus between her use of meth and risk of harm to Kane. The Court here finds that the nexus was created by the admission of meth use around Kane, his positive test for meth, and testimony regarding that use causing a safety concern.

The Court here does find that Carter was exposed to the same harm as Kane. Even though he was out of the home in the recent past, he would be exposed to harm going forward in the care of Angela and Scott. He also had positive drug screens that cause him to be on probation, furthering the risk of harm to which he has been exposed.

In regards to Kane, the decision is affirmed. The case is reversed and remanded in regard to Carter.
